



# Unilink

## Legal & Risk Newsletter



### Who are we?

**“Legal & Risk must be a really big team! Every time I need to contact them, I get referred to someone different!”** This sentence was recently overheard when a colleague was referred to Legal & Risk for assistance. In reality, Legal & Risk is actually quite small; the variety of referrals reflects the range of roles performed by the team. This article provides insight into the range of enquiries the team responds to and hopefully demonstrates the wide range of services that we provide.

### Legal

The legal team (Celine McInerney, Geraldine Yam, Kim Evans and Richard Duddy) provides advice, information and support for a variety of legal and compliance matters, from contract negotiation, copyright and privacy issues, to Freedom Of Information, estate administration, and dispute resolution. “The University” is the team’s sole client, so the solicitors within the team are unable to provide personal legal advice to staff. However, if you have a legal query relating to the University, whether seemingly straightforward or complex, contact the Legal Team for confidential and professional advice.

### Insurance

Spend time with the insurance team (Joe Di Pinto, Tom Pontt and Phillipa Schliebs), and you’re likely to overhear phone calls on issues such as student placements, travel insurance, property damage, progress of claims and more. The Insurance Team also reports ‘notifiable events’ to the University insurers. It is important for the team to have a full understanding of activities being conducted across the University to ensure adequate insurance coverage.

### Compliance

Many areas of the University are already aware of the compliance team (Richard Boyer, Phillipa Schliebs and Richard Duddy) through the rollout of the Legal Compliance Framework. So far, thirty schools and other areas have adopted the framework and the remainder of the University (including the branches) are scheduled to participate in 2012 and beyond. The Compliance Team also assist in the management of compliance matters.

### Risk

It’s a little misleading to call the Risk Team a ‘team’, as it comprises just one person (Anne Hill) and 10% of the General Counsel’s time. This hardworking duo assist with all forms of risk management at all levels of the University, from enterprise risk workshops and business continuity management advice, to one-on-one consultation with school staff.

### We want to help you

The overarching message from all of Legal & Risk is that we are here to help, and the earlier you contact us, generally, the better the outcome. You don’t need to have identified “a problem” before you call us. When we provide you with advice, tell us if you do not understand something and feel free to ask questions. Let us know if you are not satisfied with any part of our service or if you have any suggestions for improvement.

**We are here to work with you to find workable solutions and responses.**

For the full list of services we offer refer to the Legal & Risk website <http://www.adelaide.edu.au/legalandrisk/>



### From the General Counsel



Welcome to the first edition of the Legal & Risk newsletter for 2012. Now in its third year of publication, Unilink continues to provide a link between Legal & Risk and the University community.

In each edition of Unilink we strive to include legal, risk, insurance, contract, copyright and compliance articles that are informative, relevant and timely. And in 2012 we aim to bring Unilink to you more regularly—every two months. If there is an issue you would like us to cover in a future edition, let us know. Email your suggestions to: [philipa.schliebs@adelaide.edu.au](mailto:philipa.schliebs@adelaide.edu.au).

This edition we discuss mis-information in the context of University advertising (pg.2). The Australian Competition and Consumer Commission (ACCC) takes mis-information (i.e. *information that has the potential to mislead*) extremely seriously, and as an organisation that produces numerous promotional publications (including a vast website), we must be careful that what we say is correct and free from exaggeration.

Also in this edition, we promote the 2012 Education & Awareness Program (pg.3), and our new Insurance Policy Guides (now available from the [Legal & Risk website](#)).

Many thanks to Luke Dale from Kelly & Co. Lawyers who contributed the insightful article on *Lapsed Domain Names* (pg.3).

Celine McInerney, General Counsel



## Risk Management in every arena. . .

"Climate change policy is an exercise in risk management. No reasonable person could regard the risk as being so low that no action was warranted."

*Malcolm Turnbull, in his Speech to the House of Representatives on the Carbon Pollution Reduction Scheme Bills 2010.*

## Information on the University website:- Are we inadvertently giving the wrong impression?

The University website has more than 100,000 pages. Each page contains all sorts of information about what we – as a University - do, who we do it with, what we provide and to whom we can provide it. The University website receives hundreds of thousands of hits per year from current and potential local and international students who rely on the information on our website to make decisions about whether to study here, the course to choose and where to live.

What if we inadvertently give them the wrong impression?

### What the Law says. . .

The *Competition and Consumer Act* (formerly the *Trade Practices Act*) prohibits conduct that is misleading or deceptive, or **is likely to** mislead or deceive. The most common breaches of this law are mis-information; it doesn't matter whether it is unintentional or accidental, or 'just an exaggeration', or even if correct information was available elsewhere. There are no excuses.

This means that if information on the University website might create a misleading impression in the mind of a "moron in a hurry", for example about the cost, content, value or the quality of our services, we have probably breached the law.

### What can Misleading or Deceptive Conduct apply to?

These laws apply to just about everything, including our representations online.

- Written documents or advertisements
- Impressions given by previous conduct  
- e.g. *claiming to have authority or qualifications you do not have*
- Oral statements or representations (formal or informal)  
- e.g. *telephone conversations*
- Silence (in some cases)  
- *not correcting someone's assumptions or impression that you know is incorrect*  
- *omitting information*
- Exaggerations
- Typographical errors and misprints
- A pattern of behaviour
- Inadvertent breaches and innocent mistakes



### Hypothetical Examples

**Example 1:** During an email exchange, an innocent typo leads a prospective international student to think that a particular program fee is \$7,000 rather than \$17,000. The prospective student packs her bags and moves to Adelaide, only to discover on arrival that she is required to pay more than double what she expected.

**Example 2:** A student enrolls in a Level 2 course, on the basis that there are no 'assumed knowledge' requirements listed on the University website for that course. Throughout the course of the semester, the student repeatedly hears his lecturer referring to a Level 1 course as a pre-requisite to the Level 2 course. The student eventually fails.

**Example 3:** An international student enrolls in a University course based on information she has read on the University website about the course content and career opportunities. She sells her house and moves to Adelaide with her husband and small child. After a year of study, it becomes apparent that the course is nothing like it was described on the website.

**In each of these examples, the University might find itself liable to reimburse course fees, relocation costs and other losses.**

### Misinformation = Expensive

As the above examples demonstrate, under the *Competition and Consumer Act*, misinformation can be costly for the University.



Misinformation may also be a criminal offence under the *Misrepresentation Act (SA)*. The *Education Services for Overseas Students Act (Cth)* contains similar provisions specifically about international students.

### Be careful what you say

In all communications (e.g. phone calls, emails, advertisements, letters, pamphlets, webpages), consider the following:

- Always tell the truth and be accurate
- Be careful not to mislead, exaggerate or overstate
- Include all necessary information
- There is no "easy out". Do not try and rely on "fine print", disclaimers, loopholes or exclusion clauses
- Explain the nature of transactions carefully, especially to international students

*If you are unsure about whether your statements or representations are likely to mislead or deceive, call Kim Evans, Senior Legal Counsel on 8313 6103 or email [kim.evans@adelaide.edu.au](mailto:kim.evans@adelaide.edu.au).*

## Coca-Cola's 'myths' busted by the ACCC

In 2009, an article by a University of Queensland Professor Laurence Walsh, played a major role in forcing Coca-Cola to retract claims that some health risks of the product were "myths". The article, published by the Australian Dental Association (ADA), provided an evidence-based review of Coke and dental health, and was used by the ACCC to bring Coca-Cola to account for a "myth busting" ad campaign, which was described as "misleading and deceptive". The campaign referred to a number of 'myths' about the drink, including that Coca-Cola makes you fat, rots your teeth and is packed with caffeine. The ACCC considered the advertising was likely to be misleading and deceptive, in particular, to mothers who are often the decision makers about family nutrition. The company was forced to produce corrective advertising in major newspapers as well as implementing a trade practices law compliance review.



The latest AON Australasian Risk Management Benchmarking Survey showed that for the fourth year running, "Brand and Image" ranked as the number one risk concern amongst businesses. "Increased use of social networks" was specifically sighted as providing potential risk to an organisation's brand, image and reputation.

## Lapsed Domain Name Sells for \$125,000

### Key Points

- A failure to renew a '.com.au' domain name has recently resulted in that domain name selling to a new registrant for a record price of \$125,000 at auction.
- The increasing resale prices of domain names demonstrate the value of a domain name to a business and the importance of continuing legal diligence to maintain appropriate protection.

The domain name 'investmentproperty.com.au' was recently sold at public auction for \$125,000 after its owner let the registration expire. The owner was apparently not aware that the registration had expired and subsequently lost the rights to the domain name. This amount is a new record for the sale of a '.com.au' domain name at public auction, although private '.com.au' sales are thought to have reached amounts in excess of \$153,000. Sales of '.com' domain names have reached even higher levels, with domain names sold for amounts as high as \$US13 million.

The registration of a domain name does not grant ownership of that name. Registration of a domain name confers an exclusive licence to use that domain name for a period of time. A licence to a '.com.au' domain name will last for a period of two years, while licences to use other domain names will typically be for periods of anywhere from one to ten years. If the registration of a domain name is not renewed, the licence will be cancelled and the domain name will become available for registration by someone else.

The popularity and worth of domain names has given rise to 'drop registrars', dedicated domain name registrars that register domain names immediately after they expire and are deleted by the domain name registry. These domain names are often subsequently sold via online auctions to the highest bidder. The more desirable the domain name, the higher the bids.

Today, a domain name can form an integral part of a brand. For example domain names such as 'carsales.com.au' and 'realestate.com.au' effectively constitute the trading names of those businesses.

The loss of a domain name can hurt not only the brand equity of a business, but also have significant practical implications. Customers looking for your website may instead end up at the website of a competitor. Emails sent to addresses associated with the domain name will bounce, or worse yet, end up in the wrong hands.

With the existence of automated 'drop registrars' to catch expired names, it is important that domain name registrations are properly renewed. In light of the minimal cost involved in renewing registration, domain name owners should take careful steps to monitor the status of their domain names and ensure their registrations do not lapse.



*This article was written by Luke Dale (Partner) and reproduced with the kind permission of Kelly & Co, an external legal service provider to the University of Adelaide. This update is © Kelly & Co. Lawyers and is for general guidance only.*

## 2012 Education & Awareness Program

In 2012 we would like to offer tailored Education & Awareness sessions to your School or Faculty, based on your area's training needs and interests.

Sessions may be as broad as an overview of insurance or risk management in the context of the University, or as specific as what constitutes 'misleading conduct' under the Competition and Consumer Act.

Sessions can range from 1 hour to a half-day workshop on any of the following topics:

- Copyright Compliance within the University
- Fraud Control
- Competition & Consumer Act (Trade Practices)
- University Insurance and Your Role
- Directors & Officers Responsibilities
- "Connecting the Dots" - Contracts, Compliance and Risk Management
- Legal Compliance
- Risk Management
- Contract Management
- Notifiable Event Reporting
- University Risk Register (URR)

To discuss your options, phone 8313 5033 or 8313 4539 or email [helpdesklegal@adelaide.edu.au](mailto:helpdesklegal@adelaide.edu.au).

## NEW Insurance Policy Guides

The 2012 Insurance Policy Guides are now available from the Legal & Risk website: [www.adelaide.edu.au/legalandrisk/insurance/information](http://www.adelaide.edu.au/legalandrisk/insurance/information).

The new guides contain additional insurance information, amended claims processes, updated Student Placement Agreements and the 2012 Memorandum of Insurance (i.e. proof of insurance) for all classes of insurance, including University Travel, Clinical Trials, Volunteer and Personal Accident.

There are numerous guides for Student Work Experience that are specific to a particular school (e.g. Masters of Psychology, Nursing Student and Dental Student), as well as a generic guide that covers all other work experience and community placements.

Some of our insurance providers have recently changed—including our travel provider—so please ensure that you refer to the latest documents on our website, rather than an old guide from a previous year.

For all your insurance enquiries, contact Joe Di Pinto (Manager Insurance) on (08) 8313 4635 or Tom Pontt (Insurance Officer) on (08) 8313 3878.

**Last year, the insurance team responded to more than 6,100 insurance inquiries via phone and email**

